

Remarks

Claims 32, 36 and 37 are pending. Applicant appreciates the withdrawal of the previous rejections based on the assertion that the claimed invention is obvious over Prosniak M, et al. *A novel candidate oncogene, MCT-1, is involved in cell cycle progression*. Cancer Research (October 1, 1998), pp 4233-4237, in view of Young et al. (U.S. Patent No. 6,153,740).

For the maintained rejections in the instant Office Action, Applicant respectfully requests reconsideration and a favorable advisory action in this case.

Priority

It is asserted in the Office Action that, with respect to the disclosure of SEQ ID NO:8, the instant application is not entitled to priority to provisional application serial no. 60/085,029, filed May 11, 1998. Applicant courteously reiterates disagreement and believes that priority should be accorded to the filing date of the provisional for the all of the original claims, as well as the presently pending claims. However, in order to expedite allowance of the instant claims, Applicant responds to the only remaining rejection as follows.

Rejection under 35 U.S.C. § 102(e)

All the claims remain rejected based on the assertion that they are anticipated by Edwards et al. (US 6,783,961), which is accorded an earliest effective filing date of February 26, 1999. Applicant reiterates over the previously submitted response that the Edwards et al. reference does not claim the same invention as in the instant case.

In response to the rejection over Edwards et al., the Examiner's attention is directed to the enclosed declaration of Dr. Gartenhaus under 35 CFR 1.131 and the article appended thereto as Exhibit A (Dierov et al., *Increased G1 Cyclin/cdk Activity in Cells Overexpressing the Candidate Oncogene, MCT-1* (Journal of Cellular Biochemistry 74:544-550 (1999))). It is respectfully submitted that the declaration and article clearly establish that Dr. Gartenhaus was in possession of the claimed invention prior to February 26, 1999, which is the effective date of the Edwards et al. reference. In particular, the declaration and manuscript establish an actual

reduction to practice of the claimed invention at least as early as the date the Dierov article was received by the Journal of Cellular Biochemistry (i.e., January 26, 1999). Therefore, it is submitted that the Edwards et al. reference should be removed from consideration. Also submitted herewith is a declaration from Dr. Gartenhaus under 35 CFR 1.132 establishing that the Dierov reference discloses his own work and that none of the other authors listed on it are inventors in the present case.

Conclusion

Based on the remarks and the declaration presented herein, Applicant believes all the pending claims are now in condition for allowance and respectfully requests the Examiner to allow all the claims. Any fees due may be charged to deposit account number 08-2442.

Respectfully submitted,
HODGSON RUSS LLP

/John D. Lopinski/

By _____
John D. Lopinski, Ph.D.
Reg. No. 50,846

The Guaranty Building
140 Pearl Street, Suite 100
Buffalo, NY 14202-4040
Tel: (716) 848-1430
DATE: April 19, 2010